

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARTIN A. RECKLAW,)	CASE NO. 5:08 CV 425
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
)	Magistrate Judge Gallas
)	
COMMISSIONER OF SOCIAL SECURITY,)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
)	
Defendant.)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Gallas (Docket #22). The Magistrate Judge recommends that the final decision of the Commissioner be VACATED and the case REMANDED pursuant to the Fourth Sentence of 42 U.S.C. § 405(g) for further proceedings consistent with the Report and Recommendation. On February 19, 2009, the Commissioner filed a Response to the Magistrate Judge's Report and Recommendation (Docket #23), indicating that no objections to the Report and Recommendation would be filed.

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When

objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b) addresses only the review of reports to which objections have been made; it does not indicate the appropriate standard of review for those reports to which no objections have been properly made. The Advisory Committee on Civil Rules commented on a district court's review of *unopposed* reports by magistrate judges. In regard to subsection (b) of Rule 72, the advisory committee stated: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72 advisory committee's notes (citation omitted).

The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."

Conclusion

The Court hereby ADOPTS the Report and Recommendation of Magistrate Judge Gallas. (Docket #22.) The Commissioner's decision is hereby VACATED and the case is hereby REMANDED for further proceedings consistent with the Report and Recommendation.

IT IS SO ORDERED.

s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: February 24, 2009